

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSE RAMIREZ,)	
Petitioner,)	
v.)	C.A. No. 03-40281-NMG
)	
STEVEN J. O'BRIEN,)	
SUPERINTENDENT,)	
Respondent.)	

MEMORANDUM AND ORDER

On December 4, 2003, petitioner Jose Ramirez, now incarcerated at N.C.C.I. Gardner, submitted, through counsel, a petition under 28 U.S.C. § 2254 for writ of habeas corpus accompanied by an application to proceed without prepayment of fees. For the reasons stated below, the Court directs the clerk to amend the case caption and serve the petition.

DISCUSSION

Now before the Court is petitioner's petition under 28 U.S.C. § 2254 for writ of habeas corpus. The petition names as respondent Kathleen M. Dennehy, Acting Commissioner of Corrections. The proper respondent to a Section 2254 petition is the petitioner's custodian, which in this case is Steven J. O'Brien, the Superintendent of N.C.C.I. Gardner. See Rule 2(a) of Rules Governing Section 2254 Cases; 28 U.S.C. § 2243. The Clerk shall amend the case caption to reflect that Superintendent O'Brien is the sole respondent in this action.

The Court will direct the Clerk to serve the petition on Superintendent O'Brien and the Attorney General for the

Commonwealth of Massachusetts. See Rules Governing Section 2254 Cases in the United States District Courts, Rule 4 (service).

ORDER

ACCORDINGLY, for the reasons stated above, it is hereby
ORDERED

- (1) the Clerk shall correct the case caption to list Steven J. O'Brien, Superintendent as the sole respondent;
- (2) the Clerk shall serve a copy of this Memorandum and Order and the petition by mailing copies, certified mail, to Superintendent Steven J. O'Brien, N.C.C.I. Gardner, P.O. Box 466, Gardner, MA 01440; AND the Attorney General for the Commonwealth of Massachusetts, Attention: William J. Meade, Chief, Appellate Division, One Ashburton Place, 18th Fl., Boston, MA 02108-1598.
- (3) the Respondent shall, within 20 days of receipt of this Memorandum and Order, file an answer (or other proper responsive pleading) to the habeas petitions. This Court further requests the Respondent, as part of the return, to file such documents which reflect on the issue as to whether Petitioner exhausted available state remedies with respect to the matters raised by the Petitions.

SO ORDERED.

Dated at Worcester, Massachusetts, this 31st day of Dec. 2003.



NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE